

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE  
DEFIBRILLATORS PRODUCTS  
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to ALL ACTIONS

**PRETRIAL ORDER NO. 17**

This matter is before the Court on Plaintiffs' Motion to Compel Production of Documents From Ernst & Young. Plaintiffs served a subpoena duces tecum on Guidant's independent auditor, Ernst & Young, seeking documents Guidant had given to Ernst & Young. In response, Ernst & Young produced 479 of pages documents to Plaintiffs and withheld 10 documents, asserting that those documents were protected by the attorney/client privilege or on the basis of work-product doctrine.<sup>1</sup> The documents withheld are memoranda and emails that discuss in detail Guidant's litigation reserves (both aggregate and individual) and Guidant's methods for determining those reserves.

Based upon the presentations of the parties and in-camera review of the documents at issue, the Court concludes that the documents are protected from discovery by the work-product doctrine. *See Hickman v. Taylor*, 329 U.S. 495, 510-12 (1947); Fed. R. Civ. P. 26(b)(3); *see also Simon v. G.D. Searle & Co.*, 816 F.2d 397, 401-02 (8th Cir. 1987) (explaining that individual case reserve figures revealing the mental impression of lawyers are protected by the work-product doctrine). This protection was not waived by

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<sup>1</sup> Guidant later withdrew its assertion of attorney/client privilege.

disclosure to Ernst & Young, as Ernst & Young was neither an adversary, nor a conduit to an adversary. *See Merrill Lynch & Co., Inc. v. Allegheny Energy, Inc.*, 229 F.R.D. 441, 447-48 (S.D.N.Y. 2004). Therefore, it is **HEREBY ORDERED** that Plaintiffs' Motion to Compel Defendants' Production of Documents From Ernst & Young (Doc. No. 378) is **DENIED**.

Dated: August 15, 2006

s/Donovan W. Frank  
DONOVAN W. FRANK  
Judge of United States District Court